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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

SHANNON PUGERUDE, as guardian *ad litem* on behalf of OP, a minor, Plaintiff, v. **BEND-LAPINE SCHOOL DISTRICT**; and **BRENDEN SULLIVAN**, Defendants.	Case No. **COMPLAINT** Personal Injury; Title IX; Title II §504; Discrimination in Education (ORS 659.850); Abuse of a Vulnerable Person (ORS 124.100) **DEMAND FOR JURY TRIAL**

JURISDICTION

This case arises, in part, under 20 USC §§1681 *et seq* (Title IX), and 42 USC §12101 *et seq* (Title II §504), and jurisdiction is therefore proper under 28 USC §§1331, 1332, and 1343. The court has supplemental jurisdiction over the related state claims, which arise out of the common nucleus of operative facts.

CONCISE STATEMENT OF FACTS

1. OP was a 15-year-old student at Tamarack Learning Center and Summit High School, in the Bend-LaPine School District. (Hereinafter "Tamarack," and "Summit," respectively), and a minor under ORS 109.510.

2. Plaintiff, Shannon Pugerude, was OP's parent.

3. Defendant, Bend–LaPine School District, (hereinafter "BLP") in Deschutes County, Oregon, was the recipient of federal funding. Tamarack and Summit were public secondary education schools or programs within BLP, financed in whole or in part by the State of Oregon.

4. Defendant, Brenden Sullivan (hereinafter referred to as "Sullivan") was a student-peer of OP's at Tamarack and Summit.

5. All conduct alleged herein took place within the course and scope of OP and Sullivan's functions as students in the BLP, and within its context and control.

6. OP had mental health diagnoses, which included Psychotic Disorder Not Otherwise Specified (Early Onset Schizophrenia), Anxiety Disorder, and Dissociative Identity Disorder, and was a qualified individual with a disability, under Title II (Section 504), and, subsequent to the rape, Post-Traumatic Stress Disorder. OP took psychotropic medications to control her mental health.

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7. OP's psychiatric disability causes her to struggle to stay mentally present and on-task in all school settings, and she expends a high level of mental energy keeping herself connected to reality rather than slipping into psychosis.

8. OP was incapable of consent to a sexual act by reason of age, mental defect and mental incapacity.

9. Beginning at the start of the 2015-2016 school year, OP had complained of feeling "unsafe" at both schools as a result of Sullivan's aggressively sexual conduct toward her. On or about September 9, 2015, OP and her parents, Shannon and Matthew Pugerude, spoke with Hayley Etnier at Tamarack about their concerns of Sullivan's aggressive sexual conduct toward OP.

10. BLP was aware of Sullivan's overt sexual aggressiveness toward OP, to the extent that BLP had developed a Behavior Support Plan, (hereinafter referred to as "BSP") so as to schedule OP and Sullivan not to have classes together or otherwise be together. The BSP provided, in part, that if OP and Sullivan were to be together during the school day, they were to be supervised closely and continuously, not out of adult supervision for any amount of time.

11. On or about September 11, 2015, OP and her parents met with Tamarack staff for an intake meeting for OP, during which time OP presented staff with a written note about her specific concerns regarding Sullivan. OP and her family

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discussed with BLP staff Shannon Pugerude's earlier telephone conversation with Hayley Etnier regarding Sullivan, and Etnier's agreement that a Behavior Support Plan (hereinafter BSP) be put in place to minimize contact between OP and Sullivan, assuring adult supervision of OP and Sullivan at all times they were together.

12. Subsequent to the intake meeting, OP continued to report to Tamarack staff of Sullivan's harassment.

13. On September 16, 2015, OP telephoned the Bend Police Department to report that she was upset because she was feeling unsafe at school, in that Sullivan continued to bully her, and pressure her for sex.

14. That evening, Shannon Pugerude emailed Robert Naegele and Bob Bures about OP feeing bullied at both Tamarack and Summit; about OP's persistent feeling of being unsafe at school; and that OP was hopeful the police would help her not go to school, but take her somewhere where someone could "fix" her.

15. Despite the BSP, on September 23, 2015, OP and Sullivan were sitting next to each other during the school bus ride from Tamarack to Summit. During the ride, Sullivan encouraged OP to leave the Summit campus with him, smoke marijuana, and have sexual intercourse.

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16. Once in the Summit parking lot, Sullivan took OP into bushes at the North end of campus where they smoked marijuana. Sullivan, then removed some of her clothes, and had sexual intercourse with OP without her consent.

17. That afternoon, OP's grandmother, Rosann Stevenson, found OP in the girl's bathroom at Summit with her underwear soaked in blood, and blood running down her leg.

18. That same afternoon, OP was taken to St Charles Hospital Emergency Department for a Sexual Assault Nurse Examiners exam, where physical injuries were noted, including a ruptured hymen, vaginal and cervical bleeding, lacerations, abrasions, and cuts to her buttocks and legs.

19. Subsequently, OP was referred to KIDS Center, in Bend, by the Bend Police Department, where she underwent a second physical and mental exam related to the rape.

20. OP continued to experience bullying and harassment from student-peers at Tamarack and Summit, related to OP's reporting of the rape, including, but not limited to:

a. In March 2016 – on at least one occasion– Sullivan telephoned student-peers at Tamarack during school hours, with derogatory, harassing, demeaning, or embarrassing comments related to the rape, including that OP

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had made up the facts of the rape, and encouraged the student-peers to broadcast the comments over their cell phones in the Tamarack hallway.

b. At Summit, Thompson, a student-peer of Sullivan and OP, called OP a "slut," and a second girl called OP a "stupid bitch," and "flipped her off;"

c. In March, 2016, several Summit student-peers texted derogatory, harassing, demeaning, or embarrassing comments to OP about the rape;

d. On or about October 21, 2016, Howard, a male student-peer at Summit, commented to OP in the school lunch room that her "ass and boobs were hot," and that he would be "kind and respectful" to her if she sent him nude photos of herself, which she did. OP knew that Howard and Sullivan were friends, and had reason to believe that Sullivan had put Howard up to this.

e. On or about October 31, 2016, a female student-peer at Summit told OP in the school lunchroom that she had heard about Howard and Sullivan, and that OP was "such a bitch," and threatened to beat her up and "fuck shit up" for her.

f. Continuing to attend Tamarack and Summit began unbearable, and to "trigger" OP's PTSD symptoms and she transferred to Mt View High School in February 2017.

21. Plaintiff provided BLP with a timely tort claim notice.

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22. A Title IX Grievance was filed against BLP, March 26, 2016.

23. This action was filed more than 90 days, and within one year, after the grievance was filed.

SEXUAL BATTERY
(Sullivan)

24. For her first claim for relief against Sullivan, plaintiff realleges paragraphs 1–8, and 15–19, and incorporates them by this reference. She further alleges that:

25. Sullivan's sexual acts were harmful, offensive, and nonconsensual, and constituted "rape," under ORS 163.375(1)(d).

26. As a further result of the rape, OP sustained medical expenses in an amount not expected to exceed $100,000; and lost future earning capacity in an amount not expected to exceed $400,000, to her economic damages of $500,000.

27. As a further result of the rape, OP suffered mental and emotional distress, including fright, shame, humiliation, and anguish. She started "cutting" herself, and became suicidal to the point of making plans to kill herself with a knife, to her noneconomic damages of $2,000,000.

VICARIOUS LIABILITY
(Sexual Battery Against BLP)

28. For her second claim for relief against BLP, plaintiff realleges paragraphs

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1–19, 21, and 25 –27, and incorporates them by this reference. She further alleges that:

29. BLP was in a special relationship with plaintiff arising from the relationship between educators and children entrusted to their care apart from any general responsibility, not unreasonably to expose people to a foreseeable risk of harm. Oregon law mandates compulsory school attendance, which mandates that children be so entrusted to a school, with little choice as to which school. The majority of students are minors, and school personnel assume a great deal of authority over their conduct during the school day.

30. In addition, BLP School District Policies prohibit students from assaulting, harassing, discriminating, threatening, bullying, and hazing other students or obscene or unsafe behavior during school hours.

31. BLP knew of Sullivan's propensity for sexual harassment toward OP.

32. BLP had a duty to protect OP from foreseeable risks of Sullivan's acts.

33. BLP was vicariously liable for Sullivan's sexual acts.

STUDENT-TO-STUDENT SEXUAL HARASSMENT
(20 USC §1681 Title IX)
(Against BLP)

34. For her third claim for relief against BLP, plaintiff realleges paragraphs 1–27, 29–32, and incorporates them by this reference. She further alleges that:

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35. BLP had knowledge of Sullivan's sexual harassment of OP prior to the rape, but failed to take immediate and appropriate action to remedy the sexual harassment.

36. BLP had knowledge of the rape, but failed to take immediate and appropriate action thereafter to remedy the continuing sexual harassment by Sullivan and student-peers.

37. The sexual harassment before, during, and after the rape was sufficiently severe, pervasive, and objectively offensive so as to create a hostile environment based on sex.

38. BLP's failure to take immediate and appropriate action prior to the rape, and to take immediate and appropriate action after the rape to prevent continuation of sexual harassment, constituted deliberate indifference to a danger OP would not have otherwise faced, based on her sex.

39. Plaintiff is entitled to her attorney fees and costs under 42 USC §1988.

DISABILITY HARASSMENT
(TITLE II Section 504)
(Against BLP)

40. For her fourth claim for relief against BLP, plaintiff realleges paragraphs 1–21–23, 25–27, 30, 35–38, and incorporates them by this reference. She further alleges that:

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41. Sullivan's sexual harassment of OP was made possible, or exacerbated by OP's disability.

42. The sexual harassment of OP by student-peers after the rape was made possible, or exacerbated by OP's disability.

43. The sexual harassment discriminated against OP in that it excluded her from participation in, or denied her the benefits of BLP's services, education programs or access to its resources and opportunities based on her disability.

DISCRIMINATION IN EDUCATION
(Against BLP)

44. For her fifth claim for relief against BLP, plaintiff realleges paragraphs 1–14, 20, 21, 22, 23, 25-27, 42–43, and incorporates them by this reference. She further alleges that:

45. BLP treatment of OP subjected her to unlawful discrimination based on disability, under ORS 659.850(1).

46. Plaintiff is entitled to her reasonable attorney fees under ORS 659.860(7).

ABUSE OF A VULNERABLE PERSON
(Against Sullivan)

47. For her sixth claim for relief against Sullivan, plaintiff realleges paragraphs 1–27, and incorporates them by this reference. She further alleges that:

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48. Plaintiff was a "Vulnerable person" under ORS 124.100(1)(g)(C), in that she was "Incapacitated" and a "Minor," under ORS 125.005(5), and (6); and a "person with a disability," under ORS 124.100(1)(g)(D).

49. Sullivan's conduct at all times, and the conduct of BLP student-peers after the rape, constituted physical abuse under ORS 124.105(1)(a), (e), (f), (g,) and (h.) and other BLP's conduct constituted physical abuse under ORS 124.105(1)(a), (e), (f), (g), and (h.

50. Plaintiff is entitled to three times her economic and noneconomic damages, under ORS 124.100(2)(a) and (b), and to her reasonable attorney fees under ORS 124.100(2)(c).

VICARIOUS LIABILITY
(Abuse of a Vulnerable Person Against BLP)

51. For her seventh claim for relief against BLP, plaintiff realleges paragraphs 1–27, 48–50, and incorporates them by this reference. She further alleges that:

52. BLP failed to adequately supervise OP and Sullivan, permitting Sullivan to be alone with OP without adult supervision, resulting in the rape.

53. BLP failed to adequately supervise Sullivan, and others, after the rape, permitting the sexual harassment to continue until OP transferred to a different high school.

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54. BLP is vicariously liable for OP's sexual harassment.

NEGLIGENCE
(Against BLP)

55. For her eighth claim for relief against BLP, plaintiff realleges paragraphs 1–23, 25–27, 31, and 32, and incorporates them by this reference. She further alleges that:

56. BLP owed OP a duty to supervise all students when they were in school. BLP warranted and accepted the burden and responsibility of keeping students safe by and through its adopted school board policies.

57. BLP had a duty when students were within the school boundaries and during school hours, to protect OP from unlawful discrimination, harassment, intimidation, or threats of violence.

58. BLP breached its duty of supervision to plaintiff by failing to adequately investigate and deter the discrimination, harassment, or intimidation, or threats of violence, and by failing to adhere to the law, and BLP policies, in the performance of its official duties.

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(Against BLP)

59. For her ninth claim for relief against BLP, plaintiff realleges paragraphs 1–

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23, 25–27, 31, and 32, and incorporates them by this reference. She further alleges that.

60. The special relationship between BLP and OP gave rise to a heightened duty of care on the part of BLP beyond the common-law duty to exercise reasonable care to prevent foreseeable harm, sufficient to impose liability on BLP.

61. OP's legally protected interest was sufficiently important to support the imposition of liability for negligently causing physical and emotional harm.

62. Plaintiff demands a jury trial.

Wherefore, plaintiff demands judgment against defendants, and each of them, as follows:

a. For claim 1, against Sullivan, economic damages of $500,000; and noneconomic damages in the amount of $2,000,000;

b. For claim 6, against Sullivan, three times economic and noneconomic damages;

c. For claims 2, 3, 4, 5, 8, and 9, against BLP, economic damages in amount to be determined at trial, and noneconomic damages of $4 million.

d. For claim 7 against BLP, three times economic and noneconomic damages;

e. For claims 3, 4, and 5, against BLP, plaintiff's attorney fees;

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f. For claim 6 against Sullivan, plaintiff's attorney fees; and

g. Plaintiff's costs and disbursements.

DATED this 20 day of March, 2017.

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